



Tenderers are not required to submit a signed copy of the Framework Agreement Terms and Conditions as part of their tender as this will be finalised post tender award.



Rialtas na hÉireann
Government of Ireland

**FRAMEWORK AGREEMENT WITH A MULTIPLE SUPPLIER FRAMEWORK
FOR THE PROVISION OF TRUSTED ADVISOR SERVICES**

LOT X- DESCRIPTION

BETWEEN

(1) SUSTAINABLE ENERGY AUTHORITY OF IRELAND

AND

(2) [FRAMEWORK MEMBER NAME]

DATE:



Framework Agreement for the provision of Trusted Advisor Services **for [Lot 1: Name of Lot]**

PARTIES

Sustainable Energy Authority of Ireland of 3 Park Place, Hatch Street Upper, Dublin 2, D02 FX65 ("SEAI")

AND

[insert legal name of Framework Member] of [insert address of Framework Member and Company Registration number] (Hereinafter referred to as the "**Framework Member**" or "**Member**")

The Framework Member and SEAI may be referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

(a) SEAI has conducted a tender competition advertised

- i. On the Irish Government procurement website www.etenders.gov.ie and
- ii. **In the Official Journal of the European Union (OJEU) as per Directive 2014/24/EU as transposed into National Law by S.I. 284 of 2016 European Union (Award of Public Authority) Regulations 2016.]**

(b) The open procedure was used and a Call for Tender was issued with a tender submission deadline of **XX XXXXXXXX 20XX**

It is hereby agreed as follows:

This Agreement consists of the following documents, and in the case of a conflict of wording, in the following order of priority:

- i. This Agreement and attached schedules;
- ii. The Call for Tender;
- iii. The Tender.

1 Interpretation

1.1. In this Agreement, the following terms have the following meanings unless the context otherwise provides:



"Call for Tender" means the document issued by SEAI on **xxxxxxx**

"Call-Off Contract" means any contract awarded on foot of this Framework Agreement.

"Commencement Date" means after **xxxxxxx**.

"Competitive Procedure" means the process leading to the establishment of this framework agreement and/or award of a Contract on foot of this Framework Agreement.

"Contract" means a contract which falls within the scope of this Framework Agreement and for which SEAI conducts a Competitive Procedure under the terms of this Agreement;

"Framework Agreement" means these terms and conditions, including any Schedules hereto;

"Framework Members" means the suppliers or service providers who have entered into a Framework Agreement with SEAI on foot of a Competitive Procedure.

"Framework Period" means the period in years set out in Clause 3.1;

"Other Conditions" means for example Special Terms and Conditions or Service Level Agreement as may be appropriate;

"Services" has the meaning set out in Clause 4.1 of this Agreement;

"Tender" means the submission by the Framework Member in response to the Call for Tender, together with any clarifications accepted by SEAI.

1.2 In this Agreement:

- 1.2.1 To the extent that any specific term or condition in a Contract is inconsistent or conflicts with any term or condition of this Framework Agreement, the relevant term or condition that is most favourable to SEAI shall prevail.
- 1.2.2 Headings are included for ease of reference only and shall not affect the construction of this Framework Agreement.
- 1.2.3 Unless the contract requires otherwise, words in the singular may include the plural and vice versa.



- 1.2.4 "Includes" or "including" shall be construed without limitation.
- 1.2.5 References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.
- 1.2.6 This Agreement shall become effective only upon the same being executed by or on behalf of the Parties hereto.
- 1.2.7 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which when executed and delivered constitute an original; all such counterparts together constituting one and the same instrument.

2. Appointment of Framework Member

- 2.1 In consideration of the obligations assumed by the Framework Member pursuant to this Agreement, SEAI hereby appoints the Framework Member as one of several Framework Members to provide the Services, if instructed to do so from time to time by SEAI.
- 2.2 The Members appointed to the Framework Agreement (in ranked order) are:
- i) *[insert the names of all the framework members in rank order]*
 - ii) *XXXXXXXXXX*
- (the 'Framework Members').
- 2.3 This Agreement sets out, amongst others, the award procedure for Services which may be required by SEAI, the main terms and conditions for any Call-Off Contract, and the obligations of the Framework Members during and after the Framework Period.
- 2.4 The Framework Member is not entitled to be consulted in respect of, or awarded any contract during the Framework Period. SEAI may at its sole discretion choose not to enter into any contracts falling within the scope of this Agreement, or to terminate the Agreement in accordance with Section 10.
- 2.5 While this Agreement will in general form the basis for the award of contracts during the Framework Period falling within the scope set out in Clause 4.1 SEAI reserves the right to operate outside the terms of this Agreement, for example, in the event that it considers that it is not achieving value-for-money.



3. Period of Framework Agreement

3.1 The period of the Framework Agreement will be for a period of 2 year(s) ("the Term") which subject to satisfactory performance, organisational needs and budget availability, may be extended for up to two consecutive periods of twelve months each on the same terms and conditions, depending on the project's progression and subject to SEAI's obligations, including statutory and legal obligations.

3.2 For the avoidance of doubt, SEAI confirms that the period of any contracts awarded under this Agreement may extend beyond the date of expiry of the agreement.

3.3 The Framework Agreement shall take effect on the Commencement Date.

4. Scope of Framework Agreement

4.1 This Agreement relates to the provision of Trusted Advisor Services Framework. **Lot X** ("Services").

4.2 The maximum value of funding by SEAI over the life of this Agreement is **€xxxxx** ex VAT.

4.3 It should be emphasised that this value is not a guarantee of any spend over the life of the Framework Agreement.

5. Operation of the Framework

5.1 As and when SEAI decides to source Services through this Framework Agreement, tasks under the Framework may be awarded as follows:

- by means of a direct draw down of a framework member selected by SEAI without re-opening a competition amongst Framework Members in accordance with the criteria set out in Section 5.2 below (a "**Direct Draw Down**").
- by re-opening a mini competition amongst Framework Members in the manner set out in Section 5.3 below (a "**Mini-Competition**").

Selection of a Direct Draw Down shall be determined by SEAI on a case-by-case basis having regard to the size and nature of the services requirement. Without limiting or affecting this approach, it is envisaged that service requirements with a lower size, value and/ or complexity (for example, services up to 10 days) may be allocated using the Direct



Draw Down by rotation method whereas larger higher value and/or complex services requirements may be allocated using the Mini-Competition method.

5.2 Direct Draw Down using the Rotation Method

The allocation of services requirements amongst Framework Members will be on the basis of a Direct Draw Down method whereby contracts are awarded on foot of original tenders to the first ranked firm admitted to the Framework Agreement. Where they are not able to deliver the contract due to availability, conflict of interest etc, the next ranked firm will be approached moving in ranked order through the Framework Members until the contract is awarded.

For the avoidance of doubt, the framework member ranked first will be the first party contacted and offered the first contract, each subsequent piece of work will be offered to the next highest ranked framework member. Once the last framework member on the list is contacted, the rotation starts back at the top and the process is repeated. When a piece of work is awarded and the list is not exhausted, the “unavailable / not contactable Framework Member(s)” will be contacted again in the next rotation.

Performance to date

SEAI will also consider the performance to date of Framework Members, as evaluated by SEAI (see Performance Review/section 7.3); and

Having regard to the wide scope of services that may be required from time to time, different factors will take priority having regard to various operational constraints. In such cases, SEAI shall apply the above factors in an objective manner.

5.3 Mini-Competition

SEAI will use Mini-Competitions (Request for Mini-Tender) for Contracts likely to exceed 10 days' work.

In such circumstances, SEAI will invite all Framework Members to participate in the Mini-Competition. SEAI may issue a Request for Mini-Tender by direct email. On each occasion, a Request for Mini-Tender will be issued detailing the scope of requirements, the award criteria and a closing date and time. Framework Members will be required to submit their bids in writing. The proposed rates shall not exceed the original rates quoted by the Framework Member. SEAI shall award the Call-Off



Contract for the Mini-Competition to the best Tender based on the award criteria specified in the Request for Mini-Tender documents.

- 5.3.1 SEAI will complete a Request for Mini-Tender indicating the scope of the Call-Off Contract to be awarded and the award criteria.
- 5.3.2 SEAI shall fix a deadline for the receipt of the Mini-Tender taking into account the complexity of the scope of requirements and the time needed to prepare an appropriate Mini-Tender.
- 5.3.3 SEAI will issue the Request for Mini-Tender by email to all Framework Members which are capable of performing the Call-Off Contract.
- 5.3.4 Mini-Tenders shall be submitted in writing and their content shall remain confidential until at least the stipulated time limit for replies has expired. The Mini-Tender shall comply with the requirements of the Request for Mini-Tender and the terms set out in Clause 6.2.
- 5.3.5 Any clarifications requested by a Framework Member in relation to a Request for Mini-Tender shall be submitted in writing by email and any responses containing further material information will be issued in writing to all other Framework Members.
- 5.3.6 Award Criteria
The criterion for the award of a Call-Off Contract pursuant to this Sub-Clause 5.3 will be the most economically advantageous Mini-Tender.
- 5.3.7 In order to reflect the requirements of the particular tasks to be awarded, each Request for Mini-Tender will set out the precise award criteria, scope and weightings applicable to the award of the task in question.
- 5.3.8 Following evaluation of all valid Mini-Tenders received against the award criteria set out in the Request for Mini-Tender, if SEAI is satisfied, and decides that it wishes to enter into a Call-Off Contract for that task with the successful Framework Member, it will enter into the Call-Off Contract with the successful Framework Member.



5.3.9 SEAI shall not be responsible for any costs incurred by the Framework Member in the preparation of a Mini-Tender or any related site visits.

5.4 When awarding a task, SEAI and the Framework Member shall not make any substantial amendments to the terms laid down in this Agreement.

5.5 The Framework Member acknowledges that SEAI shall not be obliged to award any tasks pursuant to this Clause 5 and that SEAI may terminate the award procedure at any time at its sole discretion.

6. Notification of the Award of a Task

6.1 Under Direct Draw Down using the Rotation Method: When SEAI has decided to assign a task pursuant to Clause 5.2, it will issue a Purchase Order to the Framework Member referencing this Agreement. Only then can a Framework Member commence work.

6.2 Under the Mini-Competition: When SEAI has made an award decision pursuant to Clause 5.4 SEAI will issue a notification by email to all Framework Members that have submitted a Mini-Tender. The notification will contain the following information:

6.2.1 in the case of the successful Framework Member, any decisions reached concerning the award of the task; and

6.2.2 in the case of the unsuccessful Framework Members:

6.2.2.1 any decisions reached concerning the award of the task;

6.2.2.2 the reasons for the rejection of the Mini-Tender;

6.2.2.3 the characteristics and relative advantages of the Mini-Tender selected;

and

6.2.2.4 the name/title of the successful Framework Member.

6.2.3 When SEAI has decided to assign a task under the Mini-Competition, it will issue a Purchase Order to the Framework Member referencing this Framework Agreement. Only then can a Framework Member commence work.



- 6.3 When SEAI has decided to cancel a Competitive Procedure pursuant to Clause 5.5, SEAI shall issue a notification by email to all Framework Members that have submitted a Mini-Tender informing them of the cancellation of the Competitive Procedure and the reasons for this cancellation.

7. Fixed Conditions for Contracts

7.1 Prices

The maximum price chargeable by the Framework Member during the 4 [four] year period of the Framework Agreement is as set out in the Form of Tender appended as Schedule 1.

7.2 Personnel

The resources nominated by the Framework Member must be those used in the award of any Contract under the Framework. Where the successful Framework Member proposes to replace a nominated person, the replacement must be of equal or better qualifications and expertise than that of the original nominated person(s). Any replacements must be notified in writing to SEAI and must be agreed by SEAI prior to their commencement of any work under the Framework.

The approved list of nominated resources is as set out in the Resource Allocation in Schedule 1.

7.3 Performance Review

SEAI shall be entitled to review and monitor a Framework Member's performance of all Services provided under the Framework Agreement from time to time in accordance with SEAI's regular review procedures. Without limiting or affecting this principle, this may be done:

- (a) on case by case basis by reference to random samples of work or having regard to specific categories of work provided for specific requirements; or
- (b) by reference to the first piece of work carried out or deliverable provided by the Framework Member, and thereafter on a random sampling basis.

Such a review may include consideration of the following non-exhaustive criteria (and may be considered on a cumulative basis having regard to a Framework Member's performance over the duration of the Framework Agreement):

- (a) whether the Framework Member has satisfactorily delivered the relevant Services having regard to the identified objective of the SEAI in respect of the Purchase Order Contract e.g. satisfactory feedback from the relevant public



sector body for which the Framework Member provided the relevant works or services, or the level of progress made by the relevant public body in achieving energy savings through the relevant Framework Member's work (where applicable);

- (b) whether the Framework Member has satisfactorily delivered the relevant Services having regard to the requirements of a relevant Contract e.g. quality of reports and deliverables, timeliness and efficiency of delivery of the requirements by appropriately skilled team members;
- (c) compliance with SEAI's procedural and administration requirements; and
- (d) other relevant factors, including misconduct and negligence in the performance of the Services (having regard, for example, to the terms of the Framework Agreement, and/or the Purchase Order).

At any time during the Framework Period and/or during the term of any Contract, SEAI may give the Framework Member details of the result of its performance review.

SEAI may suspend (or, as appropriate in accordance with the terms of the Framework Agreement, exclude) a Framework Member for such period as SEAI considers appropriate if SEAI considers that any of the following non-exhaustive events have occurred:

- (a) if the Framework Member is found, following assessment, to have failed at the relevant time to comply with their declared competencies;
- (b) if, in SEAI's reasonable opinion, any statement in the Framework Member's Tender or any supplemental tender (if required) was untrue, incorrect or misleading when made or ceases to be true or correct;
- (c) the Framework Member threatens to cease, or ceases, participating in the Framework Agreement (in whole or in part) or abandons participation in the Framework Agreement;
- (d) SEAI terminates any Purchase Order in accordance with its terms or SEAI becomes entitled to terminate a Purchase Order in accordance with its terms (except where SEAI can do so for convenience);
- (e) if, in SEAI's reasonable opinion, there is a material detrimental change in the economic and/or financial standing and/or the credit rating of the Framework Member (or any of the persons comprising it) or if the Framework Member is



insolvent, or SEAI reasonably considers that there is a risk that the Framework Member is about to become insolvent;

- (f) If a Framework Member makes a formal written request to be removed as a Framework Member, either indefinitely, or for a specified period of time.

SEAI is entitled to terminate the Framework Agreement and to issue a notice to terminate for the following non-exhaustive reasons:

- (a) if the Framework Member commits a material breach (whether repudiatory or not) of the Framework Agreement;
- (b) if the Framework Member commits a number of defaults or repeated defaults which, taken together, constitute, in the sole opinion of SEAI, a material breach (whether repudiatory or not) of the Framework Agreement or are to SEAI's material detriment;
- (c) if the Framework Member ceases to hold a valid and current tax clearance certificate issued by the Irish Revenue Commissioners.

7.4 Change Control Procedure

- (a) At any time during the Framework Period, SEAI may propose a change or changes to any part or parts of this Agreement.
- (b) A change control notice ("**Change Control Notice**") shall be prepared for all change requests.
- (c) The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("**Impact Assessment**").
- (d) All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.
- (e) The Framework Member must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.
- (f) On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.
- (g) In the event that either Framework Member rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- (h) The Framework Member and SEAI will agree a reasonable charge in advance, if applicable, for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If SEAI's request for



any variation is subsequently withdrawn but results in a delay in the performance of the Services then the Framework Member will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

8. Obligations of Framework Member

8.1 Conflict of Interest

The Framework Member represents and warrants to SEAI that it has no conflict of interest in relation to its provision of the Services and acknowledges that it is required to inform SEAI of any conflict of interest of which it becomes aware during the period of the Framework Agreement. The Framework Member must communicate any registrable interest involving the Framework Member and SEAI or employees of SEAI or their relatives to SEAI immediately. The terms 'registrable interest' and 'relative' shall be interpreted as per Section 2 and the Second Schedule of the Ethics in Public Office Act, 1995 (as amended). In the event that during the Framework Period the Framework Member is in any way directly or indirectly engaged or concerned in any other business or undertaking where there is likely to be a conflict of interest with the interests of SEAI, or where a registrable interest exists, then the Framework Member shall immediately notify SEAI whereupon SEAI may and in its sole discretion terminate this Agreement and/or disqualify the Framework Member from tendering for a Contract and/or invalidate an award of Contract without notice and with immediate effect.

8.2 Insurances

Each Framework Member is required to maintain, at a minimum, the levels and forms of insurance set out in the tender documents and as detailed in Schedule 2 of this Agreement for the duration of the Framework and any extensions thereafter.

8.3 Tax Clearance Certificate

The Framework Member shall maintain a tax clearance status as declared by the Irish Revenue Commissioners throughout the Framework Period and the period of any Contract (whichever is longer).

8.4 Changes to Circumstances

If at any point during the Framework Period or during the lifetime of a Contract the Member becomes aware of circumstances that might affect the validity of any of the statements in clauses 8.1 to 8.3 above, it shall notify SEAI in writing of such circumstances at the earliest possible opportunity. Failure to notify SEAI of any such changes may result in termination of this Agreement.

8.5 Corrupt Gifts and Inducements



8.5.1 The Parties agree at all times to comply with the Ethics in Public Office Act 1995 (as amended) and the Prevention of Corruption Acts 1889-2010 in relation to this Agreement or any other contract with SEAI.

8.5.2 The Framework Member shall not give, provide or offer to any staff or agent of SEAI a loan, fee, reward, gift, advantage, benefit or other payment during the Framework Period as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this Agreement or any Contract.

8.5.3 In the event of a breach of clause 8.5.1 or 8.5.2, SEAI shall be entitled to terminate this Agreement and any Contract immediately and to recover from the Framework Member all losses resulting from such termination.

8.6 Audits

Any Contract awarded under this Agreement may be subject to audit by SEAI or an authorised third party. In this event, the Framework Member is required to provide all reasonable assistance and to comply with all requests for information in relation to any Contract performed or partly performed by it under the Framework Agreement. Failure to provide the required information may result in termination of appointment as a Framework Member or exclusion from any future Contract.

8.7 Assignment

The Framework Member shall not assign the benefit of its appointment under this Agreement, or under any Contract, or any part thereof, without the prior written agreement of SEAI.

9. Termination of Appointment

9.1 Without prejudice to any other rights or remedies to which it may be entitled, SEAI shall be entitled to terminate the appointment of the Framework Member immediately and without liability by giving notice at any time if:

9.1.1 The Framework Member commits a material breach of any term or condition of this Agreement, or a Contract concluded under the Framework Agreement;

9.1.2 The Member fails to perform any obligation or responsibility under this Agreement or a Contract concluded under the Framework Agreement, and, if such breach is capable of being remedied, fails to remedy the



breach within fourteen (14) days of notice given by SEAI requiring the Framework Member to do so;

- 9.1.3 The Framework Member's performance of an obligation under a Contract is not in accordance with the terms of this Agreement or the relevant Contract, or fails to meet any standard prescribed by law;
- 9.1.4 Any person employed by the Framework Member or acting on its behalf offers or appears to offer a corrupt gift or inducement in the sense set out in Clause 8.5 above, whether with or without the knowledge of the Member;
- 9.1.5 The Framework Member convenes a meeting for the purposes of, or proposes to enter into any arrangement or composition for the benefit of its creditors;
- 9.1.6 The Framework Member ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law;
- 9.1.7 The Member is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014 or any analogous provision of law;
- 9.1.8 An order is made or an effective resolution is passed for the winding up of the Framework Member's company other than for the purpose of a restructuring the terms of which have been agreed by SEAI;
- 9.1.9 A petition is presented or an order is made or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, receiver, trustee or any similar officer over the Framework Member's company;
- 9.1.10 An encumbrancer takes possession, or a receiver is appointed, to any of the property or assets of the Framework Member;
- 9.1.11 SEAI reasonably believes that any of the events mentioned above is about to occur in relation to the Framework Member and notifies the Framework Member;
- 9.1.12 The Framework Member has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Agreement or any relevant Contract;



9.1.13 Any representation made by the Framework Member in connection with this Agreement or a Contract shall in the opinion of SEAI prove to be untrue or incorrect in a material respect as of the date when made;

9.1.14 SEAI is entitled to terminate this Agreement under any other clause or paragraph;

9.1.15 Any event analogous to those contemplated in Clauses 9.1.5 through 9.1.12 occurs to the Framework Member within the laws of any other jurisdiction.

10. Termination of Framework Agreement

10.1 SEAI reserves the right to terminate this Agreement by providing fourteen (14) days' notice in writing to all Framework Members. The Framework Member shall have no claim for damages or otherwise against SEAI as a result of SEAI terminating this Agreement in accordance with this clause.

10.2 Termination of the Framework Agreement pursuant to Clause 10.1 shall not relieve or discharge the Framework Member from any obligations which may have accrued prior to such termination.

10.3 For the avoidance of doubt, termination of this Agreement shall not affect the validity of any Contract entered into by SEAI and any provider of the Service pursuant to that Framework Agreement.

11. General

11.1 Freedom of Information and Access to Information on the Environment

SEAI is subject to the Freedom of Information Act 2014, as amended (the "FOI Act") and the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (the "AIE Regulations"). Any record provided to SEAI by the Framework Member, or in the possession of the Framework Member shall, insofar as it relates to the Services provided for under this Agreement, be deemed for the purposes of the FOI Act and the AIE Regulations to be held by SEAI and be made available to SEAI upon request, for retention by SEAI for such period as SEAI considers reasonable in the circumstances.

Such records will be treated in confidence and no information contained therein will be communicated to any third party without the written permission of the Framework member except insofar as is specifically required under law, including



the Freedom of Information (FOI) Act 2014, the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (the "AIE Regulations"), EU and Irish Government Procurement Procedures, or in response to questions, debates or other parliamentary procedures in or of the Oireachtas (the Irish Parliament).

Framework Members are asked to consider if any of the information supplied by them insofar as it relates to the Services provided for under this Agreement, should not be disclosed because of its sensitivity. If this is the case, Framework Members should specify the information that is sensitive and the reasons for its sensitivity. SEAI cannot guarantee that any information provided by Framework Members will not be released pursuant to SEAI's obligations under law. SEAI accepts no liability whatsoever in respect of any information provided which is subsequently released or in respect of any consequential damage suffered as a result of such disclosure.

11.2 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of Ireland and, subject to the provisions of Clause 11.3 the Irish courts shall have exclusive jurisdiction to hear and determine any dispute arising out of or in connection with this Agreement.

11.3 Resolution of Disputes

11.3.1 Any dispute or difference arising out of or in connection with this Agreement shall be referred in the first instance to **Name of Contact Person** within the Framework Member and **Name of Contact Person** within SEAI.

11.3.2 If the dispute has not been resolved within (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the dispute to an independent mediator within the jurisdiction of Ireland, the identity of whom shall be agreed in advance by the Parties.

11.3.3 If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator within the jurisdiction of Ireland.

11.3.4 Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally



privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.

11.3.5 The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.

11.3.6 For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Framework Member shall comply fully with the requirements of the Agreement at all times.

11.4 **Waiver**

A term or condition of this Agreement may only be waived in writing by express reference to this clause. Failure by either Party to exercise their rights under, or to enforce compliance with these terms or conditions shall not operate as a waiver or in any way preclude or prevent the exercise of further rights or the enforcement of that, or any other, term or condition in the future. A waiver of any breach of the terms of these conditions shall not be deemed to be a waiver of any other breach or default and shall in no way affect the other terms of the Contract.

11.5 **Severability**

Should any provision of this Agreement (or part thereof) be or subsequently be found to be invalid, unlawful or unenforceable, then the Parties shall amend that provision or, if that is not possible, it may be severed from the Framework Agreement and the remainder of the Agreement shall continue in full force and effect.

11.6 **Force Majeure**

Force Majeure Event means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business. B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall



promptly notify the other Party in writing specifying: 1. the nature of the Force Majeure Event; 2. the anticipated delay in the performance of obligations; 3. the action proposed to minimise the impact of the Force Majeure Event; and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause. C. If the Force Majeure Event continues for 30 calendar days either Party may terminate at 14 days notice. D. In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

11.7 Public Procurement

Nothing in this Agreement shall prevent SEAI from complying with its obligations under public procurement legislation. If necessary, this Agreement and any Contract concluded hereunder may be abridged, modified, or amended without penalty to SEAI so as to enable it comply with the said obligations.

12. Notices

12.1 The address, email and telephone numbers of the parties for the purpose of the giving of notices under this Agreement are as follows:

SEAI

[Name of contact for notices,]

Three Park Place, Upper Hatch Street

Dublin 2,

D02 FX65

E-mail address:@.....

Tel: +353 X XXXXXXXX

("Client's Contact")

The Framework Member

[Name of Company]

[Name of contact for notices]

[Address Line 1]

[Address Line 2]

[Address Line 3]

E-mail address:@.....

Tel: +353 X XXXXXXXX

("Framework Member's Contact")



12.2 Any notice or other communication whether required or permitted to be given by one Party hereto to the other shall be in writing and shall be deemed to have been duly given if signed by or on behalf of a duly authorised officer of the Party giving the notice and:

12.2.1 If delivered, at the time of delivery to the addressee or its duly authorised agent;

12.2.2 If sent by pre-paid post, four (4) days after posting if addressed to the Party to whom such notice is to be given at the address set forth for such Party in this Agreement (or such other address as is from time to time notified to the other Party hereto);

12.2.3 If transmitted electronically on receipt of 'read receipt' or equivalent.

12.3 All notices to SEAI or the Framework Member from the other Party under this Agreement or the relevant Contract shall be in writing and sent to the appropriate address set out above.

12.4 All notices, documents and communications provided under this Agreement or the relevant Contract shall be in the English language.

13. Relationship of Parties

The Framework Member accepts and acknowledges that in providing the Services it is acting as an independent party vis a vis SEAI, that nothing in this Agreement shall constitute a partnership or joint venture nor establish a relationship of agency or employment between the Parties

14 Data Protection and Security

A. In this Agreement the following terms shall have the meanings respectively ascribed to them:

"Data" means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with the Client (including but not limited to his employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the Client provided under this Agreement and includes any Personal Data;

"Data Controller" has the meaning given under the Data Protection Laws;

"Data Processor" has the meaning given under the Data Protection Laws;



“Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland.

“Data Subject” has the meaning given under the Data Protection Laws;

“Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

“Personal Data” has the meaning given under Data Protection Laws;

“Processing” has the meaning given under the Data Protection Laws;

- B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. Schedule 4 sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of clause 14B, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:-
 - (1) process that Personal Data only on the written instructions of the Client;
 - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate,

pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident,

and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled;

- i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- E. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).



- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Client, the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland, and/or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the Services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall:-
 - (1) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
 - (2) ensure that a back-up copy of any and all such Personal Data is made as required but not less than once per week and this copy is recorded on media



from which the data can be reloaded if there is any corruption or loss of the data; and

(3) in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.

- M. The Client does not consent to the Contractor appointing any third party processor of Personal Data under this agreement
- N. Save for clauses 14B, 14C, 14D(4) and 14E, all the obligations on the Contractor in this clause 14 relating to the processing of Personal Data shall apply to the processing of all Data.
- O. The provisions of this clause 14 shall survive termination and or expiry of this Agreement for any reason.

SEAI reserves the right to review and update the data protection terms upon review of tender submissions and completion of vendor due diligence, including the requirement for a standalone data processing agreement to be put in place with the vendor, dependent on the nature and risk of the processing.

15. Employment Law

- 15.1 The Framework Member shall comply with any law applicable in Ireland (including, without limitation, common law, statute, statutory instrument, any statutory terms and conditions, proclamation, bye-law, directive, constitutions, decision, regulation, regulatory policy, rule, order, notice, rule of court, any Employment Regulations Order and Registered Employment Agreements) relating to the employment of people in Ireland.
- 15.2 The Framework Member shall afford SEAI the right to reasonably audit and monitor the Framework Member's compliance with clause 15.1 above and with any other applicable employment law generally.
- 15.3 State dispute mechanisms shall be used in the resolution of any employment dispute between SEAI and the Framework Member, including any involving sub-Framework Members.



16. Payment

16.1 Subject to the provisions of this clause 16 SEAI shall pay and discharge the charges (plus any applicable VAT), in the manner specified at Schedule 1. Invoicing arrangements shall be on such terms as may be agreed between the Parties.

16.2 Discharge of the charges is subject to:

16.2.1 Compliance by the Framework Members with the provisions of this Agreement

including but not limited to any milestones, compliance schedules and/or operational protocols in place from time to time;

16.2.2 The furnishing by the Framework Member of a valid invoice and such supporting documentation as may be required by SEAI from time to time. Any Framework Member pre-printed terms and conditions are hereby disallowed;

16.2.4 Invoices being submitted to SEAI's Contact (as set out in Clause 12.1 of this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case maybe) must be raised by SEAI's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period, the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of SEAI or upon such deemed acceptance the invoice shall be payable by SEAI. Payment is subject to any rights reserved by SEAI under any other provision of this Agreement; and

16.2.5 SEAI being in possession of the Framework Member's current Tax Clearance Certificate. The Framework Member shall comply with all EU and domestic taxation law and requirements.

16.2.6 The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments and interest on late payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.

16.2.7 Wherever under this Agreement any sum of money is recoverable from or payable by the Framework Member (including any sum which the Framework Member is liable to pay to SEAI in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then



due, or which at any later time may become due to the Framework Member under the Agreement or under any other Agreement or contract with SEAI. Any overpayment by either Party, whether of the charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

16.2.8 The charges shall include any and all costs or expenses incurred by the Framework Member, its employees, servants and agents in the performance of its obligations under this Agreement.

16.2.9 The charges shall be discharged as provided for in this clause subject to the retention by SEAI in accordance with section 523 of the Taxes Consolidation Act, 1997 (as amended) of any Professional Services Withholding Tax payable to the Framework Member. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Framework Member and the Framework Member so acknowledges and confirms.

17. Indemnification, Liability and Remedies

17.1 The Framework Member shall be liable for and shall indemnify SEAI for and in respect of all and any losses, claims, demands, damages or expenses which SEAI may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Framework Member, its employees, Sub-Framework Members or agents or any of them in relation to the Services and this Agreement. The terms of this clause 17.1 shall survive termination of this Agreement for any reason.

17.2 Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Framework Member's indemnity under Clause 18.7, neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and however arising even if such Party has been advised of their possibility.

17.3 Should SEAI find itself obliged to order elsewhere in consequence of the failure of the Framework Member to deliver services, SEAI shall be entitled to recover from the Framework Member any excess prices which may be paid by SEAI.

17.4 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.



17.5 Save in respect of fraud, personal injury or death or in respect of the Framework Member's indemnity under clause 18.7 (for which no limit applies), the Framework Member's liability to SEAI under or in connection with this Agreement whatsoever and howsoever arising shall not under any circumstance exceed 100% (one hundred per cent) of the Charges paid or projected to be paid (whichever is higher) under this Agreement regardless of the number of claims.

18. Intellectual Property

18.1 Intellectual Property Rights ("**IPR**") means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction.

18.2 Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for the Framework Member or SEAI independently of this Agreement, and any IPR in Framework Member's standard hardware and software products or modifications or updates to such products.

18.3 All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement (collectively "**the Materials**") (or any part or parts thereof) shall vest in SEAI and the Framework Member so acknowledges, agrees and confirms. For the avoidance of doubt, the Framework Member hereby assigns all intellectual Property Rights, title and interest in the materials (including by way of present assignment of future copyright) to the extent that any such IPR, title or interest may be deemed by law to reside in it in the materials to SEAI absolutely.

18.4 SEAI grants to the Framework Member a royalty-free non-exclusive licence to use SEAI's Pre-existing IPR for the Framework Period to the extent necessary to enable the Framework Member to fulfil its obligations under this Agreement. Save as expressly set out in this clause 18 all Pre-Existing IPR shall remain the sole property of the Party who owned, acquired or developed such IPR.



18.5 The Framework Member shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.

18.6 Nothing in this Agreement shall prohibit or be deemed to prohibit the Framework Member from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Framework Member be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Services.

18.7 The Framework Member shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that SEAI shall be vested with all necessary rights so as to enable SEAI to enjoy the benefit of the Services for its business purposes). The Framework Member hereby indemnifies SEAI and shall keep and hold SEAI harmless from and in respect of all and any liability loss damages claims costs or expenses which arise by reason of any breach of third party IPR in so far as any such rights are used for the purposes of this Agreement.

At the option of SEAI for and in respect any such breach, the Framework Member shall at its expenses and option:

- i. procure the necessary rights for SEAI to continue use;
- ii. replace the relevant deliverable with a non-infringing equivalent;
- iii. replace the relevant deliverable to make it non-infringing while giving equivalent performance: or
- iv. if the Framework Member cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to SEAI charges paid for such deliverable less a reasonable amount for SEAI's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, together with all direct losses thereby accruing to SEAI as a result of the breach.

18.8 Upon the termination of this Agreement for whatever reason, the Framework Member shall immediately deliver up to SEAI all the Materials prepared up to the date of termination. The provisions of this clause 18 will survive the expiration or termination of this Agreement for any reason.

19. Confidentiality

19.1 Subject to clause 11.1, each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party except:-

- i. to its professional advisers subject to the provisions of this clause 19; or
- ii. as may be required by law; or
- iii. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 19; or
- iv. where SEAI or any person associated with SEAI receives a request from any person or body or authority (including but not limited to the Executive and/or the Civil Service) and SEAI considers it necessary or appropriate to so comply.

19.2 The Framework Member undertakes to comply with all reasonable directions of SEAI with regard to the use and application of all and any Confidential Information and to comply with this Clause 19;

The obligations in this clause 19 will not apply to any Confidential Information which:

- i. is in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
- ii. is or becomes publicly available other than by breach of this clause; or
- iii. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
- iv. is lawfully received by the disclosing Party from a third party (with full right to disclose).

19.3 The terms of this clause 19 shall survive expiry, completion or termination for whatever reason of this Agreement.



SIGNED:

On behalf of SEAI

Name: _____
(Block letters)
Position: _____
Signature: _____
Date: _____

On behalf of the Framework Member

Name: _____
(Block letters)
Position: _____
Signature: _____
Date: _____

Schedule 1: Form of Tender - Costs and Allocation of Resources

Schedule 2: Evidence of Tax and Insurances insurance in place as per levels detailed
at qualification tender stage

Schedule 3: The Specification

Schedule 4: SEAI Data Processing Agreement (Controller - Processor)

Schedule 1: Form of Tender -



Costs and Allocation of Resources

[complete when completing the contract]

When invoicing, the Contractor must quote the Purchase Order Number on all its invoices sent to SEAI.

All invoices must be emailed to Accounts.Payable@seai.ie with the Purchase Order number clearly referenced.



Schedule 2: Evidence of Tax and Insurances

[complete when completing the contract]



Schedule 3: The Specification

[complete when completing the contract]



Schedule 4: Data Protection

"N/A"

End of Document